

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Kevin Donald Pope,
5 Petitioner

6 v.

7 Warden Janice Killian, et al.,
8 Respondents

Case No.: 2:18-cv-00510-JAD-VCF

**Order Denying Motion for Leave to
Proceed *In Forma Pauperis***

[ECF No. 1]

9 Adjudicated habitual criminal and pro se petitioner Kevin Donald Pope was released on
10 parole after he served some prison time for escape.¹ He moves for leave to proceed *in forma*
11 *pauperis* and petitions—under “emergency” status—for post-conviction relief, invoking 28
12 U.S.C. § 2241 and 28 U.S.C. § 2255.² A motion under § 2241 “generally challenges the
13 execution of a federal prisoner’s sentence, including such matters as the administration of parole,
14 computation of a prisoner’s sentence by prison officials, prison disciplinary actions, prison
15 transfers, type of detention and prison conditions,”³ while “motions to contest the legality of a
16 [federal] sentence must be filed under § 2255 in the sentencing court.”⁴

17 Pope challenges his detention resulting from the execution of an arrest warrant issued by
18 the U.S. Parole Commission for alleged parole violations.⁵ The warrant indicates that Pope was
19 released on parole January 3, 2017, after serving 984 days of his five-year sentence for the crime
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22 ¹ ECF No. 1-1 at 8.

23 ² ECF No. 1-1.

24 ³ *Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001); *see also Hernandez v. Campbell*, 204 F.3d
25 861, 864 (9th Cir. 2000) (“Generally, motions to contest the legality of a [federal] sentence must
26 be filed under § 2255 in the sentencing court, while petitions that challenge the manner, location,
or conditions of a sentence’s execution must be brought pursuant to § 2241 in the custodial
court.”).

27 ⁴ *Hernandez*, 204 F.3d at 864.

28 ⁵ ECF No. 1-1 at 1–2, 7–11.

1 of escape with 706 days remaining to be served.⁶ Pope contends that, despite the Parole
2 Commission's assertion, he has fully served his sentence.⁷

3 As an initial matter, I find that the petition is properly brought under § 2241 because it
4 appears to be a challenge to the computation of Pope's federal sentence. So, it appears that I
5 have jurisdiction over the petitioner as the custodial court, but I reserve my right to revisit this
6 finding at a later time if at any point it appears that the motion is more appropriately a § 2255
7 motion.

8 With that said, Pope has not properly commenced this action because, although he has
9 requested leave to proceed *in forma pauperis*, he has not submitted the necessary pauper
10 application. A fully completed pauper application will include a properly executed financial
11 certificate and an inmate account statement for the past six months.⁸ Pope has failed to submit a
12 pauper application, let alone one with the required financial documents.

13 Accordingly, IT IS HEREBY ORDERED that Pope's motion for leave to proceed *in*
14 *forma pauperis* [ECF No. 1] is **DENIED without prejudice**. Pope has **until May 2, 2018, to**
15 **either: (1) pay the \$5.00 filing fee, or (2) file a fully completed pauper application with the**
16 **necessary financial records**. If Pope fails to complete one of these actions by this court-ordered
17 deadline, **this action will be DISMISSED without further prior notice**.

18 I also find that Pope has not filed this petition on the court's form for § 2241 petitions.
19 So, IT IS FURTHER ORDERED that Pope has **until May 2, 2018, to FILE an AMENDED**
20 **petition on the court's form**. He must clearly title the amended petition by writing the word
21 "AMENDED" above "Petition for a Writ of Habeas Corpus" on page 1, and he must write the
22 docket number, 2:18-cv-00510-JAD-VCF, in the space to the right of the caption. Under Local
23 Rule LR 15-1, the amended petition must be complete in itself without reference to previously
24 filed papers. That means that the amended petition completely replaces the first-in-time-filed,

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26 ⁶ *Id.* at 10.


27 ⁷ *Id.* at 2.

28 ⁸ Local Rule LSR 1-1, 1-2.

1 deficient petition, so Pope must include all of his claims in the amended petition if he wants me
2 to consider them. If Pope does not file an amended petition on the proper form by this court-
3 ordered deadline, **this action will be DISMISSED without further prior notice.**

4 The **Clerk of Court** is directed to **SEND to Pope** a copy of his papers in this action, two
5 copies of an *in forma pauperis* application form for incarcerated persons, one copy of the
6 instructions for the pauper application, and two copies of the court's form for § 2241 habeas
7 petitions.

8 Dated: April 2, 2018

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10 
U.S. District Judge Jennifer A. Dorsey